

Date of Hearing: March 2, 1999

ASSEMBLY COMMITTEE ON JUDICIARY
Sheila James Kuehl, Chair
AB 196 (Kuehl) – As Amended: February 25, 1999

SUBJECT: CHILD SUPPORT ENFORCEMENT

KEY ISSUES:

- 1) SHOULD CALIFORNIA'S CURRENT CHILD SUPPORT ENFORCEMENT SYSTEM BE SUBSTANTIALLY REFORMED TO ENSURE THAT CHILD SUPPORT IS A TOP PRIORITY FOR THE STATE AND TO MAXIMIZE THE COLLECTION OF SUPPORT FOR THE CHILDREN TO WHOM IT IS OWED?
- 2) SHOULD A NEW DEPARTMENT BE CREATED WITHIN THE HEALTH AND HUMAN SERVICES AGENCY SOLELY DEDICATED TO THE EFFICIENT ADMINISTRATION OF THE STATE CHILD SUPPORT ENFORCEMENT PROGRAM?
- 3) SHOULD A CHILD SUPPORT ADVISORY COMMISSION BE CREATED TO ALLOW GREATER COORDINATION AND COOPERATION AMONG THE VARIOUS STATE AND LOCAL ENTITIES INVOLVED IN THE CHILD SUPPORT ENFORCEMENT PROGRAM?
- 4) SHOULD A NEW UNDERSECRETARY BE APPOINTED WITHIN THE HEALTH AND HUMAN SERVICES AGENCY DEDICATED TO COORDINATING OVERSIGHT, MANAGEMENT, AND ADMINISTRATION OF THE STATE'S CHILD SUPPORT ENFORCEMENT?
- 5) SHOULD THIS BILL GO EVEN FURTHER BY CREATING EITHER NEW LOCAL CHILD SUPPORT ENFORCEMENT ENTITIES, OTHER THAN THE DISTRICT ATTORNEY WITHIN EACH OF CALIFORNIA'S 58 COUNTIES OR ENTIRELY NEW STATE OFFICES IN EACH OF THE 58 COUNTIES?

SUMMARY: Substantially restructures the state child support enforcement program ("IV-D program") to make child support enforcement a top priority of the state; to significantly increase accountability and responsibility for the program at all levels of government; and to create an effective child support program that will maximize collection and delivery of child support to the children and families to whom it is owed. Specifically, this bill:

- 1) Requires the Governor, on or before January 1, 2000, to appoint an Undersecretary for Child Support Enforcement, within the California Health and Human Services Agency, charged with the responsibility to oversee and manage the state's child support enforcement program.
- 2) Creates a new Department of Child Support Enforcement (DCSE), to be phased in by January 1, 2001, to replace the Department of Social Services as the single state agency responsible for the oversight and management of the state's child support enforcement program.

The sole responsibility and mission of this new Department shall be administration of the IV-D program.

- 3) Authorizes the Undersecretary and the director of the new Department to select and enter into plans of cooperation with county agencies which will have the responsibility for administration of the IV-D program at the local level. In determining which county agency or agencies to place responsibility for the local child support program, the Undersecretary and director shall take into account the relative abilities and commitment of county agencies to operate the program.
- 4) Sets forth the following obligations and responsibilities for the Undersecretary for Child Support Enforcement:
 - a) Facilitate the creation and phase-in of the new Department.
 - b) Coordinate all state and local entities involved in the state child support enforcement program.
 - c) Evaluate and, by July 1, 2000, adopt regulations implementing nationwide "best practices" for the establishment, enforcement, and collection of child support, which will help improve California's child support enforcement record. Counties are required to implement these practices by September 1, 2000.
 - d) Adopt uniform standards, forms, and procedures by July 1, 2000, to ensure consistency among local child support programs. Local child support agencies are required to implement these practices by September 1, 2000.
 - e) Develop, by January 1, 2001, in consultation with a steering committee, priorities and standards for evaluating the performance of local child support programs, and set minimum performance standards which counties will be required to satisfy.
- 5) Creates a new Child Support Enforcement Advisory Commission, which shall meet at least quarterly, to monitor the child support enforcement program and advise the Undersecretary and the new Department on methods to improve the efficiency and effectiveness of the program, ways to improve coordination between the many state and local departments and agencies involved in the child support program, and alternative approaches to maximizing the collection of support for children. The Commission shall be chaired by the Undersecretary for Child Support Enforcement, and include members of the following agencies: the Department of Social Services, the new Department of Child Support Enforcement, Department of Justice, Franchise Tax Board, Employment Development Department, County Welfare Directors Association, California District Attorneys Association, Judicial Council, and child support advocacy organizations.
- 6) Establishes a pilot project in six counties giving the Franchise Tax Board (FTB) responsibility for all child support collections, current and past-due. The pilot project will allow the Legislature to more effectively assess the benefits of turning over all collection activity to FTB, leaving the district attorneys or other local child support agency with tasks that may be more within their core competencies, such as establishment of support and paternity orders.

- 7) Requires the Department to gather a team of management experts (the DCSE strike force) to assist counties in improving local performance and procedures. Upon request for assistance from a county, the Department shall be required to dispatch this strike force to the county to provide needed technical and management assistance and help identify other resources needed to improve county performance.
- 8) Ensures local compliance with best practices, uniform standards, forms and procedures, and satisfaction of minimum performance standards by requiring the Department to implement the following assistance phases upon determination that a county is out of compliance or fails to satisfy the minimum performance standards:
 - a) Phase 1: Provision of technical assistance.
 - b) Phase 2: Provision of managerial assistance. The Department is required to dispatch its "strike force" to the local agency to temporarily assist in management of the program to secure compliance and improve program performance.
 - c) Phase 3: Take over of the local child support agency by the Department or one or more governmental entities designated by the Department; withholding of part or all of state and federal funding; or initiation of an action to place the local child support program into receivership.
- 9) Creates a task force to evaluate the benefits of creating an administrative, rather than judicial, process to handle pieces of the child support enforcement program, such as establishment of paternity and support orders. The task force, which shall be required to report its findings to the Legislature by February 1, 2001, is charged with the mission of analyzing and evaluating whether implementation of an administrative process will better serve the goals of providing a more cost-effective system that is more accessible for families seeking support orders.
- 10) Requires employers, by July 1, 2000, to begin regular reporting of specified earnings information on independent contractors to the Employment Development Department for inclusion in the New Employee Registry, or similar registry.

EXISTING LAW:

- 1) Requires every state to designate a single and separate organizational unit to administer the child support enforcement program described in Title IV-D of the Social Security Act. (42 U.S.C. section 654.)
- 2) Establishes the Department of Social Services (DSS) as the single statewide agency in charge of operating California's child support enforcement program and administering the state plan for securing child support and determining paternity. (Welfare and Institutions Code section 11475. All further references are to this code unless otherwise noted.)

- 3) Requires, at the local level, the child support enforcement program to be administered by the office of the district attorney, who shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations. (Section 11475.1.)
- 4) Places in the hands of DSS the responsibility for formulating and adopting all regulations and general policies necessary for the administration of the state for securing and enforcing child support and paternity obligations. (Section 11475.)
- 5) Authorizes DSS, upon determining that a public agency is failing to comply with its responsibilities under the state plan for securing and enforcing child support obligations, to withhold part or all of that agency's state and federal funds until a showing of full compliance has been made. DSS is also authorized, upon such a determination, to notify the Attorney General of the failure to comply with the state plan, who shall take appropriate action to secure compliance. (Section 11475.2.)
- 6) Places all of the following departments under the authority of the Secretary of the Health and Human Services Agency: Health Services, Mental Health, Developmental Services, Social Services, Alcohol and Drug Abuse, Aging, Employment Development, Rehabilitation, Community Services and Development. The Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities are also placed within Health and Human Services Agency, and under the purview of the Secretary. (Government Code section 12803.)
- 7) Authorizes the appointment of up to two deputy secretaries for the Secretary of the Health and Human Services Agency. (Government Code section 12803.5.)
- 8) Requires counties to forward all child support cases to the FTB for collection if the case is more than 90 days delinquent. Counties have the option of also referring non-delinquent cases, or cases less than 90 days delinquent, to the FTB for collection. (Revenue and Taxation Code sections 19271 and 19271.5.)
- 9) Requires every employer to report to the Employment Development Department (EDD), for purposes of child support enforcement, the name, address, social security and employee identification number of every newly hired employee, as well as the employer's name, address, and state identification number. The report must be submitted to EDD within 20 days of the employee's hiring. (Unemployment Insurance Code section 1088.5.)
- 10) Provides that all child support actions filed by the district attorney (DA) or by any other party in a case initiated by the DA shall be heard by a child support commissioner. The superior court in each county is required to have sufficient court commissioners to hear child support cases filed by the DA. (Family Code section 4251.) The Judicial Council, in consultation with a workgroup of various participants involved with the child support system, is required to evaluate and report to the Legislature by February 1, 2000, on the success of the commissioner system in expediting child support matters and providing a process that is cost-effective and accessible to families. (Family Code section 4252.)

COMMENTS: According to the author, "this legislation is the result of an extensive hearing held by this Committee, in conjunction with the Assembly Human Services, Senate Judiciary, and Senate Health and Human Services Committees, to examine the need to reform California's child support enforcement system and improve California's dismal child support record. There was clear consensus among all the experts at the hearing that we must undertake serious, substantial reforms of California's child support system, and the time to do so is now."

Buttressing her argument for the critical need to undertake such significant reform, the author states:

"More than three million children rely on the state's child support enforcement program to get them the support necessary to meet their basic needs -- food, shelter, clothing, and medical attention. California's child support enforcement program affects more California children than any state program other than the public schools, and by almost any measure, it is failing them. According to the most recent available data, five out of six children relying on the state's assistance are not receiving any support at all.

Problems abound in nearly every aspect of California's child support enforcement program, from the opening of a case, to the gathering of necessary information to proceed, to the establishment of paternity and support orders, to the use of the many enforcement mechanisms already provided by the Legislature. In fact, California's child support enforcement program is consistently reported to be one of the poorest child support efforts in the United States, performing below the national average in most measurements of successful child support enforcement programs.

The failures of California's child support enforcement program are rendered even more dramatic because we are living in an era of time-limited welfare. With the recent implementation of welfare reform, child support payments are often the only real "safety net" children can expect. And virtually all the experts agree that California's safety net has a big hole in it."

The author further notes "the statistics cannot be more clear -- California's child support enforcement program is terribly broken. Over one-half the families in California's child support program lack support orders -- the critical first step to collecting support -- and despite the fact that we have many of the toughest child support enforcement tools in the nation, our children are owed more than \$8 billion in past due support."

In response to the multitude of problems plaguing California's child support enforcement program, and taking her cue directly from the day-long joint informational hearing on this subject, the author comments that "this bill takes a broad-based approach to solving the child support crisis in California. Simply strengthening the support collection and enforcement tools or making minor alterations in the operation of the state IV-D program is no longer the answer. California's child support enforcement system is long past the need for tune-ups and oil changes. The time for a complete engine overhaul is here."

In order to achieve this overhaul of the child support system, AB 196 takes the following approaches:

Creating the Department of Child Support Enforcement as the agency charged with the mission of administering California's child support enforcement program. Currently, the Department of Social Services (DSS) is the agency designated as the single state agency designated to administer the child support program. DSS has relegated child support to be handled within the department its Office of Child Support. Child support is just one of many programs in which DSS is involved, and as a result cannot be its sole priority and mission. The author notes that with welfare time limits upon us, child support must be a top priority for this state. With the loss of public assistance, more and more families will be forced to depend on the regular receipt of child support payments to meet their children's basic needs. A recent study that looked at the first three states to enforce welfare benefit time limits found that the large majority of families leaving welfare did not have the child support safety net to fall back on. (U.S. General Accounting Office, Welfare Reform: Child Support an Uncertain Income Supplement for Families Leaving Welfare, August 1998.)

In order to ensure that child support is, and remains, a top priority for this state, the author believes that a separate department should be created, having as its sole mission and responsibility the effective operation of California's child support enforcement program.

Creating a Child Support Enforcement Advisory Commission to improve coordination and cooperation between the various agencies involved in the child support program, and to create a forum for the discussion of new and innovative approaches to improving the program and maximizing the collection of support for children. The child support program is hardly one run by a single entity. At the very least, the following public entities are involved in the state's IV-D program: Department of Social Services, Employment Development Department, Health and Welfare Data Center, Department of Justice, Franchise Tax Board, county district attorneys' offices, and California courts. The author states that the success of California's child support enforcement program has historically been impeded by the inability of these various entities to work together and coordinate their respective child support obligations for the benefit of the children relying on the IV-D program for assistance. By requiring the convening of a Child Support Enforcement Advisory Commission, this bill for the first time, provides a forum for these various entities to better determine how to coordinate their roles in the IV-D program, and develop new methods to improve the efficiency and effectiveness of the child support program. This concept was modeled after a similar commission established in the state of Massachusetts to achieve these same goals. (Mass. Gen.L. Ch. 119A, section 1.)

Appointing an Undersecretary for Child Support Enforcement to oversee and coordinate the multi-faceted child support enforcement program. The author believes that the appointment of an Undersecretary will better ensure cooperation between the various entities, delineated above, involved in the administration of the child support enforcement program. The author comments that "the Department of Social Services does not have any direct line authority over these agencies or over the practices and procedures they implement. In order to create a 'well-oiled' child support enforcement program, all agencies with responsibility for individual aspects of the program should be responsible to the IV-D agency and responsible for maintaining the goals and vision of the program. An Undersecretary of Child Support Enforcement will, in addition to bringing a high level of visibility and accountability to the program, be vested with the ultimate responsibility to oversee and manage the IV-D program, including the authority to

oversee aspects of the program being operated by state agencies other than DSS or the new Department of Child Support Enforcement."

Mandating uniformity and consistency of local child support program practices and procedures to ensure that all counties are collectively implementing the most effective and efficient methods for collection of child support. At the recent special hearing, child support advocates uniformly pointed to the lack of standardization between counties as a substantial contributing factor to the failure of California's child support enforcement program. The State Auditor, in reviewing the causes for the failure of Statewide Automated Child Support System (SACSS), California's child support computer system, pinpointed the problems with such lack of uniformity, noting that "the State and the counties have different needs and priorities. Unlike most other states, California's 58 counties work somewhat autonomously to perform child support enforcement activities. Operations are not centralized nor directly controlled by the State, and governance rests in the hands of elected county officials." (Bureau of State Audits, Health and Welfare Agency: Lockheed Martin Information Management Systems Failed to Deliver and the State Poorly Managed the Statewide Automated Child Support System (March 1998) at 56.)

On a programmatic level, this lack of uniformity and consistency means different approaches to, among other things, the types of cases in which the county pursues an action for paternity, the validity given to address and employment information provided by the custodial parent, the use of various enforcement mechanisms, including criminal prosecution and license revocation, case-to-caseworker staffing ratios, policies regarding case closure, informal complaint resolution processes, and many other procedures and practices. By requiring the Undersecretary to determine the proven best practices for establishment and enforcement of child support, and requiring implementation of those practices by every local child support agency, the author believes that not only will public trust in the child support program substantially increase, but that program performance will equally increase.

Examining administrative processes as a method to expedite child support matters and make the system more cost-effective and more accessible to the families involved. Many child support advocates have over the years asserted the benefits of moving to an administrative, rather than a judicial, process to resolve child support cases in the state IV-D program. It has been argued that administrative processes are more cost-effective, expeditious, user-friendly, and accessible for children and families involved in the IV-D program. In 1996, pursuant to AB 1058 (Speier), Ch. 957 of the Statutes of 1996, the Legislature established a new child support commissioner system, seeking a more administrative approach, intended to expedite the processing of child support cases. According to the Legislative declarations included in the bill, this measure was intended to create a "simple, speedy, conflict-reducing system, that is both cost-effective and accessible to families, for resolving all issues concerning children." (Family Code section 4250.) The Judicial Council allocated 50 new commissioner positions among the 58 counties based on their relative caseloads. For fiscal year 1997-98, roughly \$30 million was appropriated for the commissioner system. Pursuant to AB 2498 (Runner), 1998 Stats. Ch. 249, the Judicial Council is required to report to the Legislature by February 1, 2000, on the success of the child support system in achieving these goals.

The State of Minnesota recently adopted an administrative process for the handling of routine, uncontested child support matters in the State IV-D program. That administrative process, however, was just found to be unconstitutional by the Minnesota Supreme Court in Holmberg v. Holmberg, 1999 WL

33650 (Minn., January 28, 1999) as, among other things, a violation of the doctrine of separation of powers.

Although many child support advocates argue strongly that administrative process will significantly improve the efficiency of our child support enforcement program, in light of the pending assessment of the California's child support commissioner system, combined with the recent finding that Minnesota's administrative child support process was unconstitutional, the author is hesitant to take that step at this time. Instead, the author states that "the time is ripe to really sit down and evaluate the benefits of implementing an administrative process in California, to determine which pieces of the program if taken out of the court system will improve the program for the children and families who rely on it, and to figure out how best to craft a system which will avoid the pitfalls and obstacles other states have faced. The bill therefore creates a task force of interested parties to study implementation of an administrative child support process in California.

Expanding the role of the Franchise Tax Board in the child support program by requiring FTB takeover of all child support collections as part of limited, short-term pilot projects. In 1993, the FTB began collecting delinquent child support through a pilot project in six counties. These pilot counties were provided the option of referring delinquent child support cases to the FTB for collection. In 1995, the program was expanded to allow this voluntary referral from all counties. Due to the demonstrated success of the FTB child support collection program, and the inconsistent nature in which counties chose to refer cases to the FTB, a package of legislation in 1997 significantly expanded the FTB's role in child support collection. Pursuant to AB 573 (Kuehl), 1997 Stats. Ch. 599, AB 1395 (Escutia), 1997 Stats. Ch. 614, and SB 247 (Lockyer), 1997 Stats. Ch. 601, all counties (with limited exceptions) are required to forward to the FTB for collection cases which are more than 90 days delinquent, and may also forward current support orders to the FTB for collection. According to the FTB, in 1998 FTB child support collections totaled more than \$63 million, but no county has yet exercised the option to forward current cases for collections.

Recognizing the success of the FTB program in collecting fairly substantial amounts of support in cases in which the district attorneys were unsuccessful, but not yet certain the case has been made to transfer all child support collection efforts to the FTB, the author proposes a one-year pilot project in which six counties will be required to send all cases to the FTB for collection once a support order has been secured. The bill requires the FTB to report to the Legislature by February 15, 2001, on the relative success of this pilot project. After all the evidence is in, the Legislature will be in the best position to evaluate if the FTB does a better job at getting support to children, and if the local child support agency, no longer saddled with a task that is simply not within their core competencies, performs its remaining functions better.

ARGUMENTS IN SUPPORT: The Children's Advocacy Institute (CAI) states:

"As was made all too clear in the January 26, 1999, joint hearing . . . on California's child support system, the time for structural change is now. For over twenty years, California has limped along with a decentralized child support program structure in which 58 district attorneys essentially conducted their own programs under a largely theoretical 'single statewide agency' – the Department of Social Services. The authority of the Department

over district attorneys . . . has always been in question, and there has been no strong leadership in the Governor's office to date to make child support the priority issue that it deserves to be. As a result, California has perennially dragged along the bottom of the list of worst-performing states.

Your AB 196 makes a critical first step in improving the child support program by creating the Department of Child Support Enforcement and Undersecretary of Child Support Enforcement and a Child Support Advisory Commission. In so doing, the program is mined from the depths of the Department of Social Services, enhancing the status and visibility of the program. The beginnings of a state operational and accountability structure are included in your AB 196, as are mandatory best practices and the required development of new performance standards – all critical elements found in the best functioning child support programs of other states. CAI supports all of these elements in your bill."

This view is substantially shared by the National Center for Youth Law (NCYL) and Children Now. All three, however, argue that the bill does not go far enough. NCYL notes that although the many changes instituted by AB 196 are "long overdue and will help to dramatically improve California's child support system . . . AB 196 does not address the program's fundamental structural problems at the county level. . . Failure to fix the disjointed county structure will make efforts to reform California's program all but impossible . . . [A]s long as the local provider of services continues to be the elected district attorneys, the reality is that they – and not the new Department of Child Support or the new Undersecretary of Child Support Enforcement – will run the program."

The Coalition of Parent Support (COPS), also writes in general support of the bill. COPS notes that "AB 196 provides meaningful reforms that will increase program visibility, centralize accountability, maximize consistency, and enhance citizen participation in program oversight. The bill . . . represents a major positive step toward the creation of a child support enforcement system we can all live with. We are very pleased with the sum and substance of this measure." COPS does, however, suggest some amendments to the bill to expand the performance measurements to include customer service evaluations, to include custodial and noncustodial parents' advocates among the participants on the administrative process taskforce, and to require the evaluation of the FTB pilot to examine whether FTB "faithfully executes the law and directives of the local agency" in its collection efforts.

ARGUMENTS IN OPPOSITION: The Association for Children for Enforcement of Support (ACES), writing in opposition to this measure, states: "ACES supports a state child support agency that has state offices in every county in the state. This model is favored by 32 states. A state child support agency would provide accountability, uniformity of procedure, and removal of jurisdictional barriers. ACES urges the Assembly Judiciary Committee to look to the best practices of other states and adopt a system that will solve the problems inherent with a county-run program."

Related Pending Legislation:

AB 472 (Aroner), creating a state fair hearing process to address grievances about the district attorneys' handling of certain child support matters and establishing an amnesty program to forgive certain child support arrearages owed to the state.

SB 240 (Speier), requiring the appointment of a new cabinet secretary, the Secretary of Statewide Child Support, who shall have oversight and authority over all aspects of child support orders being enforced under the state IV-D program.

SB 542 (Burton and Schiff), replacing DSS as the state IV-D agency with a new Department of Child Support Enforcement (DCSE), not under the authority of the Health and Human Services Agency but directly accountable to the Governor. This bill also requires the DCSE to develop a plan to eliminate the role of district attorneys in counties that fail to comply with all terms and conditions of the state plan for child support and for consolidating state and local child support enforcement collection activities within DCSE.

REGISTERED SUPPORT / OPPOSITION:

Support

Children Now (if amended)
Children's Advocacy Institute (if amended)
Coalition of Parent Support (if amended)
National Center for Youth Law (if amended)

Opposition

Association for Children for Enforcement of Support (unless amended)

Analysis Prepared by: Donna S. Hershkowitz / JUD. / (916) 319-2334